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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 13. MARCH, 1907. No. 10

CASE AND COMMENT

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Apportioning Waters of International River.

A treaty between the United States and Mexico was recently announced by which the right of Mexico to the use of a certain proportion of the waters of the Rio Grande river for irrigation purposes was recognized. This constitutes a precedent of great importance on the question of power to regulate the use of waters of international rivers by treaty. It has a direct bearing on the disputed question as to the power of the United States government to regulate the use of the water of Niagara river. Unless the Federal government has power to act in such cases in respect to the uses of the waters of international rivers, the situation is very peculiar. In the case of the Rio Grande, for instance, if the Federal government has no power to regulate the use of the water by treaty with Mexico, some important questions incidentally arise. Have the people of either country, in that event, the right to take water of the Rio Grande for irrigation? If so, is there any limit to their right? Will the matter be left to an unregulated scramble by the rival nations to get each for itself the greatest possible portion of the water? These questions and others similar to them indicate the seriousness of the situation that may arise unless the respective governments have power by treaty to define their respective rights in the waters of a boundary river.

Legislative Power to License Saloons.

A surprising decision, which, if it were to be followed, would make a new departure in the law and be of extraordinary importance, is reported in the press despatches from Indiana, saying that a circuit judge has recently held that the legislature has no right to license the sale of intoxicating liquors, on the ground that retail liquor business has no legal standing, and that to engage in it is not one of the inherent common-law rights of citizenship, since the business is dangerous to public health, public morals, and public safety.

It is a great change from the time when legislative attempts to prohibit or restrict the business of selling liquors were contested stubbornly on the ground that the legislature could not constitutionally restrict the business, to the time when a judge holds that the business is at common law illegal, and that the legislature cannot legalize it. However earnest one may be in opposition to traffic of this kind, it

seems impossible, however, to uphold the doctrine of this Indiana judge. Historically, as every person who has any information on the subject must know, the sale of intoxicating liquors has always been regarded as lawful under the common law. Every Constitution and statute interfering with such traffic has presupposed the legality of the business until it was made illegal by enactment. All the decisions that have been rendered in all the courts of every degree, up to the circuit-court decision now reported, have proceeded on the ground of the legality of the business at common law, and have considered the constitutionality of any statutes on the subject solely with respect to the legislative power to interfere with the business, taking it for granted that the business was legal unless the legislature made it illegal. There seems no room for any argument on this point, as the facts cannot be disputed.

While the courts have often held that certain contracts were illegal as a matter of public policy, it is an established doctrine that on all debatable questions of public policy the legislature, if it chooses to act in the matter, determines the public policy for the state. On any such question it would certainly be remarkable to permit an appeal from the legislature to the courts. However fully, therefore, one may agree with the sentiment of the Indiana judge as to the nature of the liquor traffic, it does not seem possible that the higher courts can adopt the doctrine that they, and not the legislature, have the power to determine as to the legality of such a business, or that they will repudiate the existing body of judicial decisions on the subject.

Must Federal Courts Follow Local Decisions as to Effect of State Statutes upon Servant's Assumption of Risks.

Several recent decisions in the Federal courts have been rendered on the effect of state statutes imposing duties upon employers for the protection of employees, to abolish the defense of assumption of risks. These decisions are in decided conflict. The Federal court in most instances has discussed the question as if it were one of general law on which it must choose for itself the doctrine to be adopted, and has not seemed to regard the state decisions as to the effect of the local statute conclusive of the question. In Denver & R. G. R. Co. v. Norgate, 72 C. C. A. 365, 141 Fed. 247; St. Louis Cordage Co. v. Miller, 63 L.R.A. 551, 61 C. C. A. 477, 126 Fed. 495; Glenmont Lumber Co. v. Roy, 61 C. C. A. 506, 126 Fed. 524; and E. S. Higgins Carpet Co. v. O'Keefe, 25 C. C. A. 223, 51 U. S. App. 74, 79 Fed. 903,—it was held that the state statutes imposing duties on the master did not destroy the defense of assumption of risks; while in Chicago-Coulterville Coal Co. v. Fidelity & C. Co. 130 Fed. 957, and Narramore v. Cleveland, C. C. & St. L. R. Co. 48 L.R.A. 68, 37 C. C. A. 499, 96 Fed. 298, the contrary conclusion was reached. In the St. Louis Cordage Co. Case, which involved the effect of a Missouri statute to destroy this defense of assumption of risks, the decision was contrary to that of the Missouri courts. The Glenmont Lumber Co. Case and the Higgins Carpet Co. Case, involving statutes of Minnesota and New York, respectively, were in harmony with the decisions of the respective state courts, and the Higgins Carpet Co. Case expressly relied upon the New York decisions construing the New York statute. The Chicago-Coulterville Coal Co. Case, which reached a different conclusion from those just named, involved the effect of an Illinois statute, and was in harmony with the decisions of Illinois as to the effect of such statutes. In the Narramore Case, involving an Ohio statute, the court cited an Ohio decision on a kindred point. But while in several of these cases decisions of the state in which the statute in question was passed were cited and relied upon, in none of the cases does it seem certain that the court regarded itself as bound by those decisions, though in some of them that seems somewhat probable. In most of them the decisions would be right if the Federal court were bound by the local decisions, but this is not true in all of them.

It becomes interesting and important in this class of cases to determine whether, on such question, the Federal court is or is not bound by the local decisions as to the effect of the state statute. Since the undisputed and long-established rule in the Federal courts is that on matters of the mere construction of a state statute the

local decisions of the highest court of the state are binding upon the Federal court, the question is whether, in the class of cases here considered, the matter is or is not a question of the construction of the statute. It is not easy to see why it must not be so considered. The right of the servant to assume the obvious risks being unquestioned in the absence of the statute, the sole question to be determined is whether or not the statute has abrogated the pre-existing rule on this subject. If it is not a matter of construing the statute to determine whether or not the enactment has changed the law on the question, what is it? Of course there could be no question if the statute had in express terms declared that the former rule was abrogated; but neither would there be in that case any room for construction. Whether a statute imposing certain duties on an employer for the protection of servants, and providing a punishment for him if he fails to comply with the statute, impliedly prohibits the servant from assuming the risks of the master's disobedience of the law, seems clearly to depend upon a construction of the statute. Since the question is important, and the Federal courts have not clearly declared whether or not they must necessarily follow the local decisions, it is desirable to have this question clearly presented and plainly decided in the next Federal case in which it may arise. Meanwhile, it seems difficult to see any basis on which a Federal court can deny the conclusiveness of the local decisions as to the effect of the local statute.

Servant's Liability to Strangers for Nonfeasance.

Nothing seems clearer in reason than the proposition that one whose negligence injures another is not excused from liability because of any contract relation he may have with a third person to which the injured party is a stranger. The general doctrine of negligence seems legitimately applicable to make the negligent person directly liable to the person injured by his negligence in every instance. The person in fault may be indemnified by a contract of insurance; but that does not release him from his direct liability to the person he has injured, and there seems to be no reason for holding that any other contract relation which he may sustain with any third person will relieve him from direct liability to any person injured by his negligence. But there still linger some traces of an old doctrine to the effect that, if a negligent person was an agent or servant of another, he was not personally liable for his own negligence to the person injured thereby. Numerous decisions in recent years have made that doctrine well-nigh obsolete. So far as a servant's liability for the negligent doing of an act is concerned, probably no one would now deny that he was liable. But in a recent case a powerful effort was made to establish the servant's nonliability for his negligence in nonaction,—that is, in mere nonfeasance. It was contended with great emphasis that the agent or servant owes no duty to a third person to prevent injury from a dangerous agency, "unless he may have set the dangerous agency in motion." But, to test this, suppose that a railroad engineer, after starting a train, is relieved by another, who takes charge of the engine while the train is running at full speed. Is the latter any the less liable for reckless failure to stop the train when he sees a helpless child on the track than he would have been if he had himself set the train in motion? The negligence in such case is not in starting the train, but in failure to stop it; and it must be immaterial to the liability of the engineer who has the responsible charge of the engine whether he or someone else started the train. It is clear that the negligence by which the child is killed is mere nonfeasance,—merely the failure to stop the train. Many illustrations of the same kind could be suggested. The driver of a team of horses, or of an automobile, who fails to stop it when going at a proper speed, but when a confused or helpless person is in danger of being run over, may have taken control while the vehicle was in motion, and be guilty of no fault whatever except mere nonaction at the critical moment. In such a case, is his liability any less than if he had started the vehicle? The janitor or other custodian of a building, who has the sole charge of it, but who negligently fails to cover a coal hole or shut a grating in the sidewalk, that has been left open by some

unknown or irresponsible person, is guilty merely of nonfeasance. A sawyer in a mill, who relieves another while the saw is in full operation, is guilty of nothing but nonfeasance if he negligently fails to stop the saw in time to prevent accident to a fellow servant, or to other persons in the mill. In these and in a multitude of other cases, the duty to act in order to stop a dangerous agency at a critical time is no less clear because some other person put it in motion. The negligence was not in starting it, but in the failure to stop it. So, the failure of an engineer to give signals of approach to a railroad crossing, although mere nonfeasance, is one of the instances of negligence for which he may be held personally liable on account of striking a person at the crossing (Chesapeake & O. R. Co. v. Dixon, 179 U. S. 131, 45 L. ed. 121, 21 Sup. Ct. Rep. 67). Such illustrations fully justify the language of Jaggard on Torts, vol. 1, pp. 288, 289, where he says: "The thinness and uncertainty of the distinction between the misfeasance, malfeasance, and nonfeasance leaves an exceedingly unstable basis on which to rest an important principle of liability." One of the latest and best cases on the subject is that of Ellis v. Southern R. Co. 72 S. C. 465, 2 L.R.A.(N.S.) 378, 52 S. E. 228, in which the court holds the servant personally liable to third persons for negligence, whether misfeasance or nonfeasance. There are numerous cases in which servants are held liable to fellow servants for negligence, and these include negligence in failing to act, as well as in acting. These obviously illustrate the doctrine of the servant's personal liability as fully as if the injuries were to strangers.

"A Grateful Acknowledgment to an Honorable Profession."

Under the above heading, the Bancroft-Whitney Company, of San Francisco, publishes a statement so creditable to the lawyers of the United States that it is a pleasure to publish it.

"On April 18, 1906, the date of the great fire, the legal fraternity of this country was indebted to us in a sum in excess of $200,000. The fire destroyed all of our books of accounts.

"The lawyers of San Francisco, having lost their entire libraries, were absolved of their indebtedness to us, amounting to about $30,000. This left an amount due from outside lawyers of from $170,000 to $175,000.

"Having no lists of patrons, we sent a circular letter to the lawyers named in Martindale's Legal Directory advising them of our loss and asking for information as to their indebtedness to us. The responses to this circular were so prompt and so gratifying that we think the legal profession should know that of this total indebtedness, of say $175,000, nearly $150,000 has already been reported to us, and we are receiving advices every day from parties who had not previously answered our circular asking about their indebtedness.

"It is but right to say that some of the San Francisco attorneys declined to accept the cancelation of their accounts, and have paid same. Let it be known to the world that the legal profession is made up of men of the highest honor."

Index to New Notes IN LAWYERS REPORTS ANNOTATED 5 L.R.A.(N.S.) pages 769—1202.

Evidence.

Admissibility in evidence of copies of records of other states:—(I.) Scope of note; (II.) the Constitution and Federal statutes; (III.) effect of statutes on other methods of proof: (a) in general; (b) authentication under state statutes; (c) authentication by common law; (IV.) to what courts and records the statutes apply: (a) rule as to Federal courts; (b) rule as to state records offered in Federal courts; (c) rule as to Federal records offered in state courts; (d) rule as to territorial courts; (e) rule as to courts of chancery and probate; (f) rule as to inferior courts; (g) rule as to records of private documents; (h) rule as to records of seceding states; (i) what may be authenticated as part of judicial record; (V.) construction of statutes; formalities of authentication: (a) certification by clerk or keeper of records; (b) certification by deputy; (c) certification by governor; (d) certification by judge: (1) in general; (2) must be by "the judge, chief justice, or pre-

Among the New Decisions.

Act of God. See CARRIERS.

Assignment for creditors. See TRADE NAME.

Associations. Members of a voluntary, unincorporated pilot association which, under the state laws, could neither select nor discharge its members, nor control or direct them in the performance of their duties as licensed pilots, whether technically partners or not, are held, in Guy v. Donald, Advance Sheets, U. S. (1906) 63, not to be liable to the owners of piloted vessels for the negligence of each other, because, instead of taking their fees as they earn them, such fees go into a common fund, and, after deducting expenses, are distributed to the several members according to the number of days they respectively were on the active list.

Banks. Upon the insolvency of a bank which has been receiving taxes and delivering treasury receipts therefor, it is held, in Page County v. Rose (Iowa) 5 L.R.A. (N.S.) 886, that the county is entitled to a preference out of its assets for the amount collected and not turned over, on the theory that the bank is a trustee, where there is no authority of law to deposit the funds with the bank, and the taxpayers from whom the funds have been received cannot be ascertained.

See also CONSTITUTIONAL LAW; LIMITATION OF ACTIONS.

Benefit societies. See INSURANCE.

Bonds. See CONSTITUTIONAL LAW.

Cancelation of instruments. The jurisdiction of equity to cancel a fraudulent contract alleged to bind the assets of a corporation, and which, until canceled, will tend to injure its business and impair its credit, is sustained in Fred Macey Co. v. Macey (Mich.) 5 L.R.A.(N.S.) 1036, although there is a remedy at law by defense to an action to enforce it, or by an action to compel the restoration of the funds secured by means of it.

Fraud in the procurement of a contract is held, in Johnson v. Swanke (Wis.) 5 L.R.A.(N.S.) 1048, not to be of itself sufficient to take the case out of the rule that equity will not interfere to procure its cancelation if there is an adequate remedy at law.

Carriers. A stipulation in a steamship ticket limiting liability for baggage to a certain amount, unless the excess value is declared and paid for, is held, in Holmes v. North German Lloyd Steamship Co. (N. Y.) 5 L.R.A.(N.S.) 650, not to apply to baggage intended to be taken by the passenger to the stateroom for use during the voyage.

A street car company which undertakes to give a convention of women delegates visiting the city a free ride over its line by the use of its cars under the control of its servants is held, in Indianapolis Traction & T. Co. v. Lawson (C. C. App. 7th C.) 5 L.R.A.(N.S.) 721, to be bound to use at least ordinary care, and to be liable for injuries resulting from its failure to do so.

The liability of a railroad company for indignities offered by its conductors to a passenger who, because of its fault in not having an agent at a terminal point, where the passenger is to exhibit an order for a ticket, attempts to pursue his journey upon the order without the ticket, and is insulted and threatened with ejection by the conductor, is sustained in Cincinnati, N. O. & T. P. R. Co. v. Harris (Tenn.) 5 L.R.A.(N.S.) 779.

Failure of a railroad company for eleven days to forward property delivered to it for transportation is held, in Alabama G. S. R. Co. v. Quarles & Couturie (Ala.) 5 L.R.A.(N.S.) 867, to prevent its escaping liability in case the property is destroyed by act of God, which would not have resulted had the property been forwarded promptly. A carrier whose negligent delay in transporting goods committed to him for that purpose subjects them to destruction by act of God is held, in Green-Wheeler Shoe Co. v. Chicago, R. I. & P. R. Co. (Iowa) 5 L.R.A.(N.S.) 882, not to be able to escape liability on the theory that such result could not have been anticipated.

It is held, in Patterson v. Old Dominion Steamship Co. (N.C.) 5 L.R.A.(N.S.) 1012, to be the duty of a steamship company running a night boat to supply berths to

unobjectionable passengers in the order of application.

One who induces the conductor to permit him to ride for less than the regular fare is denied, in Grahn v. International & G. N. R. Co. (Tex.) 5 L.R.A.(N.S.) 1025, the right to hold the railroad company liable for the act of the conductor in compelling him to leave the train in a reckless and negligent manner.

See also HACKS; MONOPOLY; MUNICIPAL CORPORATIONS.

Commerce. An unconstitutional interference with interstate commerce is held, in Mississippi Railroad Commission v. Central Illinois R. Co. Advance Sheets, U. S. (1906) 91, to be made by an order of the Mississippi railroad commission requiring a railway company to stop its interstate mail trains at a specified county seat, where proper and adequate railway passenger facilities are otherwise afforded to that station.

Constitutional law. The constitutional provision against impairment of the obligation of contracts is held, in Swanson v. Ottumwa (Iowa) 5 L.R.A.(N.S.) 860, not to prevent municipal bonds from being held invalid because of want of power to issue them, although at the time they were issued the supreme court of the state had expressed the opinion that municipalities might issue such bonds.

A statute requiring the marking of small packages of butter intended for sale with their weight in figures not less than a quarter of an inch high is held, in Ex parte Dietrich (Cal.) 5 L.R.A.(N.S.) 873, to be an unconstitutional interference with liberty and property rights, and not a legitimate exercise of the police power.

Requiring the responsibility and net worth of the individual members of a private banking concern to be equal to an amount at least double the amount of the capital paid into the bank is held, in State v. Richcreek (Ind.) 5 L.R.A.(N.S.) 874, not to violate the constitutional provisions against taking property without compensation or due process of law, conferring special privileges or immunities, or abridging the privileges and immunities of citizens.

Contract obligations are held, in Offield v. New York, N. H. & H. R. Co. Advance Sheets, U. S. (1906) 73, not to be impaired by proceedings taken under a statute by the lessee and the owner of three fourths of the stock of a railroad, to condemn the outstanding shares owned by a person who refused to agree on the terms of purchase.

The failure of the Kentucky statutes to require notice to be given of a special assessment for back taxes on omitted property, made by the regular assessor under statutory authority after the time provided by law for the making of the general assessment, is held, in Security Trust & S. V. Co. v. Lexington, Advance Sheets, U. S. (1906) 87, not to deprive the taxpayer of his property without due process of law, where the state court has afforded him full opportunity to be heard on the question of the validity and amount of the tax, and, on such hearing, has reduced the tax.

Restricting railway mail clerks and others whose employment in and about a railroad subjects them to greater peril than passengers in the strict sense to such right of action against the railway company for injuries received in the course of their employment as a railway employee would have under like circumstances is held, in Martin v. Pittsburg & L. E. R. Co. Advance Sheets, U. S. (1906) 100, not to be a denial of the equal protection of the laws, or of equal privileges and immunities.

State regulation of local freight rates to and from the Florida & West Shore Railway and over the Seaboard Air Line Railway is held, in Seaboard Air Line Railway v. Florida, Advance Sheets, U. S. (1906) 109, not to deprive the latter road of its property without due process of law, even if its total receipts from local freight rates are insufficient to meet what can properly be cast as burden upon that business, where, so far as appears, such regulation may have no other effect than to make the rates on the Florida West Shore Railway the same as those obtaining generally in the state.

A foreign life insurance company doing business in Missouri is held, in Northwestern Nat. L. Ins. Co. v. Riggs, Advance Sheets, U. S. (1906) 126, not to be deprived of its property without due process of law, or denied the equal protection of the laws, by a state statute which cuts off any defense by a life insurance company, domestic or foreign, based upon the false and fraudulent statements in the application, unless the matter misrepresented, in the judgment of the jury, actually contributed to the death of the insured.

A domestic corporation whose principal

office and works are outside of the state is held, in St. Mary's F. A. Petroleum Co. v. West Virginia, Advance Sheets, U. S. (1906) 132, not to be deprived of its liberty and property without due process of law, or denied the equal protection of the laws, by a state statute requiring every foreign and nonresident domestic corporation to appoint the state auditor to accept service of process, and exacting an annual fee of $10 for his services.

The exception in favor of those engaged in the business of manufacturing or wholesale merchandising, made by a statute enacted to prevent dealing in futures, is held, in Gatewood v. North Carolina, Advance Sheets, U. S. (1906) 167, not to make the act void as a denial of the equal protection of the laws.

Excluding foreign corporations from the exemption from an inheritance tax in favor of property devised for educational or religious uses, which is made by the Illinois statutes, is held, in Board of Education v. Illinois, Advance Sheets, U. S. (1906) 171, not to abridge privileges or immunities, or to deny the equal protection of the laws.

See also WILLS.

Contempt. Participation in the murder of a prisoner under sentence of death in a state court, with intent to prevent the delay attendant upon an appeal to the Federal Supreme Court from an order of the circuit court denying relief by habeas corpus, and to prevent the hearing of such appeal, is held, in United States v. Shipp, Advance Sheets, U. S. (1906) 165, to be a contempt of the Supreme Court, where such murder was committed after the appeal had been allowed, and that court had ordered that "all proceedings against the appellant be stayed, and the custody of said appellant be retained pending this appeal."

A statement in a petition for rehearing that a certain ruling of the court which has been concurred in by several courts of last resort, including that of the United States, is all wrong, and written by politicians and for politics, is held, in Re Chartz (Nev.) 5 L.R.A.(N.S.) 916, to render the one making it guilty of contempt of court.

Contracts. The right of equity to set aside a contract when it plainly appears that one party overreached the other and gained an unjust and undeserved advantage, which it would be inequitable and unrighteous to permit him to enforce, is sustained in Stone v. Moody (Wash.) 5 L.R.A. (N.S.) 799, although the victim owes his predicament largely to his own stupidity and carelessness.

A contract that one party is to be the managing agent of a drug store owned by another, which may be terminated at any time by either party, in which it is agreed that, instead of a salary, the agent's compensation shall depend upon the extent and success of the business, is held, in Campbell v. Faxon (Kan.) 5 L.R.A.(N.S.) 1002, to create a personal relation, which is dissolved by the death of one of the parties, and which is without binding effect upon the administrator of his estate.

The loss caused by the destruction by storm of a building partly finished is held, in Milske v. Steiner Mantel Co. (Md.) 5 L.R.A.(N.S.) 1105, to fall upon the one who has undertaken to complete and deliver it to the owner for a stipulated price.

A contract under seal, giving an option to purchase shares of stock within a specified time, is held, in Watkins v. Robertson (Va.) 5 L.R.A.(N.S.) 1194, to be, prior to that time, irrevocable by the grantor.

An offer by the owner of a patented pavement to permit any one to lay it for a certain price per yard, which is a large percentage of the total cost, and for which it agrees to supply and prepare a large part in value of the material to be used, is held, in Allen v. Milwaukee (Wis.) 5 L.R.A. (N.S.) 680, not to comply with the requirements of a statute authorizing a municipal corporation to use a patented article in street paving by acquiring a right to operate under the patent for a royalty, and then let the actual work to the lowest bidder.

See also CONSTITUTIONAL LAW; MONOPOLIES.

Corporations. See RECEIVERS.

Criminal law. Conditions attached to a parole or pardon by the board of pardons, that are to extend beyond, or be performed after, the expiration of the term for which the prisoner was sentenced, are held, in Ex parte Prout (Idaho) 5 L.R.A.(N.S.) 1064, to be illegal, and not enforceable after the expiration of the term for which the prisoner was sentenced.

Damages. The value of structures placed on land of an individual by a municipal corporation against his command and without statutory authority, in the construc-

tion of public improvements, prior to the institution of proceedings to condemn the right under the power of eminent domain, are held, in St. Johnsville v. Smith (N.Y.) 5 L.R.A.(N.S.) 922, to be properly taken into consideration in fixing the amount to be paid for the land taken.

Drains and sewers. See MUNICIPAL CORPORATIONS.

Easement. Laying a single pipe of a certain size under a grant of a right to lay water pipes or mains to convey a water supply is held, in Winslow v. Vallejo (Cal.) 5 L.R.A.(N.S.) 851, to fix the right of the grantee; and his right subsequently to lay additional ones is denied, unless a right in excess of the one actually used was clearly given by the grant when viewed in the light of all the conditions existing when it was executed.

Eminent domain. The withdrawal of subterranean water from under a public street in such a manner as to cause the carrying away and subsidence of abutting land is held, in Farnandis v. Great Northern R. Co. (Wash.) 5 L.R.A.(N.S.) 1086, to render the municipality or its licensees liable for such subsidence, under a Constitution requiring compensation for property damaged for public use.

The construction and operation of a telegraph and telephone line upon a rural highway is held, in Cosgriff v. Tri-State Teleph. & Teleg. Co. (N. D.) 5 L.R.A. (N.S.) 1142, not to be a highway use, within the purpose of the original dedication, but to constitute an additional servitude upon the fee of the abutting owner, for which he is entitled to compensation.

See also DAMAGES.

Equity. See CANCELATION OF INSTRUMENTS; CONTRACTS.

Evidence. Copies of the record of deeds and other similar private writings, made in a sister state, are held, in Wilcox v. Bergman (Minn.) 5 L.R.A.(N.S.) 938, to be admissible in evidence in the courts of the state, under the provisions of U. S. Rev. Stat. § 906, when properly certified and authenticated.

Executors and administrators. See CONTRACTS; GARNISHMENT.

Extradition. A person held in actual custody by a state, for trial in one of its courts under an indictment for a crime against its laws, is denied, in Pettibone v. Nichols, Advance Sheets, U. S. (1906) 111, the right to be released on habeas corpus by a Federal circuit court although the methods by which his personal presence in the state was secured may have violated the provisions of the United States Constitution or statutes relating to extradition proceedings.

The belief of the accused when leaving the demanding state that he had not committed any crime against the laws of that state is held, in Appleyard v. Com. Advance Sheets, U. S. (1906) 122, not to prevent his being a fugitive from justice, within the meaning of the United States Constitution and statutes relating to extradition proceedings.

Factors. An agreement by which goods are consigned for sale to persons who are to make advances on the consignment and hold the goods as collateral against the advances is held, in Re Joseph P. Murphy Co. (Pa.) 5 L.R.A.(N.S.) 1147, not to render the consignor a debtor for the amount of the advances before sale of the goods, but only for the balance unpaid from the proceeds of the sale.

Food. See CONSTITUTIONAL LAW.

Fraud. Public policy is held, in Hobbs v. Boatright (Mo.) 5 L.R.A.(N.S.) 906, to require the granting of relief to one defrauded into betting on a fictitious race by a gang of men who have made a practice of thus defrauding persons, although plaintiff has been led into the trap by promises of a share in the profits, and has intended, in the particular instance, to assist in defrauding some other person.

See also CANCELATION OF INSTRUMENTS.

Garnishment. That an administrator may be made garnishee for the amount owing him for fees, in a proceeding to collect a debt against him individually, is held, in Sanders v. Herndon (Ky.) 5 L.R.A.(N.S.) 1072.

Guardian and ward. See SUBROGATION.

Hacks. Proprietors of hacks and cabs, carrying passengers for hire, are held, in Lewark v. Parkinson (Kan.) 5 L.R.A. (N.S.) 1069, to be liable for all injuries caused by their failure to provide suitable vehicles, safe horses and harness, and a competent, careful driver.

Health. Members of a board of health are held, in Barry v. Smith (Mass.) 5 L.R.A.(N.S.) 1028, not to be personally liable for a mistaken or negligent exercise of the power to locate a contagious

disease hospital within a city, although they are held to be liable for personal misfeasance in so conducting the hospital that it becomes a nuisance.

Highways. See EMINENT DOMAIN; TAXES.

Homicide. The heat of passion which will reduce what would otherwise be murder to manslaughter in the third degree is held, in Johnson v. State (Wis.) 5 L.R.A.(N.S.) 809, to be such mental disturbance, caused by a reasonable and adequate provocation, as would ordinarily so overcome and dominate, or suspend the exercise of, the judgment of an ordinary man as to render his mind for the time being deaf to the voice of reason, to make him incapable of forming and executing that distinct intent to take human life essential to murder in the first degree, and to cause him uncontrollably to act from the impelling force of the disturbing cause, rather than from any real wickedness of heart or cruelty and recklessness of disposition.

That an officer attempting to rearrest one who, having been arrested upon a warrant for a misdemeanor, has escaped from custody, dangerously menaces his life, is held, in State v. Durham (N. C.) 5 L.R.A. (N.S.) 1016, not to authorize him to kill the officer in self defense.

Hospitals. See HEALTH.

Infants. See RAILROADS.

Insurance. A provision in an insurance policy that it shall be void if the insurer has other policies in force on the same life, unless consent to the additional insurance is indorsed thereon, is held, in Monahan v. Mutual L. Ins. Co. (Md.) 5 L.R.A.(N.S.) 759, to be waived by a receipt of premiums on the new policy the beneficiary in which is ignorant of the former insurance, although, by reason of faulty bookkeeping, the attention of the insurer was not in fact called to the breach of condition.

A provision in an insurance policy exempting the insurer from liability for death resulting from poison or infection is held, in Cary v. Preferred Acci. Ins. Co. (Wis.) 5 L.R.A.(N.S.) 926, not to apply where an accidental abrasion of the skin is followed by bacterial infection, blood poisoning, and death, since the infection is held not to be the proximate cause of the death.

A provision in a health-insurance policy for indemnity for blood poisoning is held, in Jones v. Pennsylvania Casualty Co. (N. C.) 5 L.R.A.(N.S.) 932, not to be destroyed by the condition that the policy shall not apply to any disease resulting from an injury or another disease. An injury to a physician by the breaking of a bottle from which he is attempting to secure medicine for a patient is held, in Central Acci. Ins. Co. v. Rembe (Ill.) 5 L.R.A. (N.S.) 933, to be within the terms of a clause of an accident-insurance policy making the insurer liable for septic wounds caused by accident while performing an operation pertaining to the business of the insured.

A statute providing for extended insurance, to be secured by application of the net value of the policy, or for a paid-up policy upon forfeiture of policies of insurance by nonpayment of premiums, is held, in Westerman v. Supreme Lodge, K. of P. (Mo.) 5 L.R.A.(N.S.) 1114, to have no application to certificates issued by mutual benefit societies which operate on the monthly assessment plan, and the amount of whose assessments are not unalterably fixed by contract, or the liability incurred definitely fixed and unchangeable.

See also RECEIVERS.

Labor organizations. Interference by a combination of persons to obtain the discharge of a workman because he refuses to comply with their wishes and join a union for their advantage is held, in Berry v. Donovan (Mass.) 5 L.R.A.(N.S.) 899, not to be justifiable as a part of the competition of workmen with one another.

The fact that a labor union recommended a certain member for an office, the appointment to which rests with a board of public officers, the members of which in turn are appointed by the mayor and council of the city, is held, in Schneider v. Local Union No. 60 (La.) 5 L.R.A.(N.S.) 891, to impose no obligation upon other members of the union, upon their subsequently becoming members of such board, to vote for the candidate recommended by their union; and their failure to vote for such candidate is held to afford no sufficient reason why their union should fine and suspend or boycott them, and they are held to be entitled to relief by injunction, and by judgment remitting the fine imposed, reinstating them in the union, and condemn-

ing the union, and its officers and members who participated in its actions, in damages, actual and exemplary.

See also PICKETING.

Laches. See LIMITATION OF ACTIONS.

Landlord and tenant. The right of lessors to recover rent after re-entry is denied in International Trust Co. v. Weeks, Advance Sheets, U. S. (1906) 69, unless a reasonable effort has been made to relet the premises, where the lease provides that after re-entry for breach of any covenant the lessors "may, at their discretion, relet the premises at the risk of the lessee, who shall remain, for the residue of the said term, responsible for the rent herein reserved, and shall be credited with such amounts only as shall be by the lessors actually realized."

The lessor of a room in a building is held, in Wade v. Herndl (Wis.) 5 L.R.A. (N.S.) 855, to be liable to the lessee for injury to his property from vibration caused by the usual and necessary method of conducting an automobile business, for which he subsequently leased other portions of the building.

Lateral support. See EMINENT DOMAIN.

Libel. Under a statute making it a misdemeanor for a school director to be directly or indirectly interested pecuniarily in the erection, warming, or ventilating of schoolhouses, it is held, in Woolley v. Plaindealer Pub. Co. (Or.) 5 L.R.A.(N.S.) 498, to be libelous *per se* to charge that a certain person who is a director lets contracts for school purposes and furnishes supplies, accepting and rejecting work at pleasure, thus compelling contractors to submit to high prices for inferior wares, or invite a rejection of their work; and that he directed the placing of a certain ventilating system in the school building, whereby he had an opportunity to sell a gasolene engine at a big profit.

Limitation of actions. An action for damages for failure to pay a check is held, in Smith's Cash Store v. First Nat. Bank (Cal.) 5 L.R.A.(N.S.) 870, to be within a statute barring in two years an action upon a contract obligation or liability not founded upon a written instrument, and not to be within the provision relating to actions involving trust relations.

A residuary legatee who, with knowledge that the estate is settled as insolvent, and that the provisions of the will as to payment of interest on her legacy are not carried out, delays for a period of thirteen years to make inquiry as to the true condition of affairs, although frequently meeting the executor, and who by slight effort might ascertain that he, after his discharge, secured title to the real estate of the deceased, which by his own efforts he has made valuable, is held, in Williams v. Woodruff (Colo.) 5 L.R.A.(N.S.) 986, to be barred by laches from maintaining an action to hold him liable as a trustee, although her share of the estate was not to be turned over to her absolutely until ten years after the death of the decedent, and she resides in a distant state.

Master and servant. That the term of future service at specified salary the promise of which becomes the consideration for the performance of temporary services at much less than their real value is indefinite is held, in Davidson v. Laughlin (Cal.) 5 L.R.A. (N.S.) 579, not to alter the rule that refusal by the employer to comply with his contract will entitle the employee to treat the entire contract as rescinded, and recover the value of the services actually performed.

A corporation engaged in the manufacture and sale of farm machinery, which furnishes its agent an automobile to facilitate his performance of the duties of the agency, is held, in Slater v. Advance Thresher Co. (Minn.) 5 L.R.A.(N.S.) 598, not to be liable to one whose horses became frightened by the negligent manner in which the agent operated the automobile, where at the time the latter was on a purely personal mission, wholly disconnected from the business of the corporation.

See also LABOR ORGANIZATIONS.

Monopolies. A contract between a railroad and express company giving the latter exclusive facilities for doing express business over the former's line is held, in State v. Missouri, K. & T. R. Co. (Tex.) 5 L.R.A.(N.S.) 783, to be within the prohibition of a statute forbidding trusts, which are defined to be combinations to create restrictions in the free pursuit of any business authorized by law, where the statute gives express companies equal rights upon the railways.

Municipal corporations. The liability of municipal corporation for changing the course of drainage of surface water, so as

to injure private property, is sustained in Roe v. Howard County (Neb.) 5 L.R.A. (N.S.) 831.

See also CONSTITUTIONAL LAW.

Nuisance. See HEALTH.

Options. See CONTRACTS.

Patents. The regulation of the sale of patent rights, made by Kansas laws, which compels one selling a patent right in any county in the state to file with the clerk of such county an authenticated copy of the letters patent, together with an affidavit of the genuineness of the letters patent and as to other matters; and provides that any written obligation given for the purchase price of a patent right shall contain the words, "given for a patent right,"—is held, in Allen v. Riley, Advance Sheets, U. S. (1906) 95, not to violate the United States Constitution, granting to Congress the right to secure to inventors the exclusive right to their discovery, nor the United States statutes, authorizing written assignments of patents, or interests therein, which shall be void as against subsequent purchasers, unless recorded in the Patent Office.

Picketing. The right of striking employees to picket their former places of employment to prevent strike breakers from taking their places is sustained in Everett Waddey Co. v. Richmond Typographical Union No. 90 (Va.) 5 L.R.A.(N.S.) 792, so long as they do not resort to intimidation or obstruct public thoroughfares.

Railroads. A boy who finds a street crossing blocked by a railroad train is held, in Hasting v. Southern R. Co. (C. C. A. 4th C.) 5 L.R.A.(N.S.) 775, to become a trespasser in entering upon the railroad property for the purpose of getting around the train; and the company is held not to be liable for his death by the violent propulsion of cars against one which he has mounted for the purpose of crossing, unless it is guilty of wantonness or wilfulness.

Receivers. The right to appoint a receiver at the instance of a domestic creditor of a foreign mutual insurance company, where the only assets in the state are the obligations of policy holders, which by the terms of the contract are merely voluntary, and not enforceable by suit, and when collected, are impressed with a trust in favor of other policy holders, is denied in Blackwell v. Mutual Reserve Fund Life Asso. (N. C.) 5 L.R.A.(N.S.) 771.

Records. See EVIDENCE.

Religion. See WILLS.

Sale. Recovery by a merchant of damages for delivery of a consignment of merchandise of a quality inferior to that contracted for is held, in Ellison v. Johnson (S.C.) 5 L.R.A.(N.S.) 1151, not to be prevented by the fact that, because of an advance in the market price, it is disposed of at a profit.

Seal. See CONTRACTS.

Street railways. The imposition upon street railway companies of the cost of paving and repaving that part of the streets occupied by their tracks is held, in Fairhaven & W. R. Co. v. New Haven, Advance Sheets, U. S. (1906) 74, to be a valid exercise of the power reserved by the state to alter or amend the charter of a street railway company, which required such company to keep the street between its tracks and 2 feet on each side in good and sufficient repair.

The driver of a four-horse team attached to a loaded van so constructed that from the driver's seat he cannot look behind the van is held, in Williamson v. Old Colony Street R. Co. (Mass.) 5 L.R.A.(N.S.) 1081, to have a right, in attempting to cross street car tracks, to act on the supposition that a motorman coming from behind will give him time to cross the tracks after he has started to do so.

Strikes. See PICKETING.

Subrogation. One who advances money to pay an encumbrance on a ward's property upon security of a deed of trust executed by the curator with the sanction of the probate court, which proves to be without justification in law, is held, in Capen v. Garrison (Mo.) 5 L.R.A.(N.S.) 838, not to be entitled, in case the old encumbrance is canceled from the record, to be subrogated to the benefit of it.

Taxes. Requiring labor for the working of highways is held, in State v. Wheeler (N. C.) 5 L.R.A.(N.S.) 1139, not to be taxation.

Telegraphs. One who undertakes a journey because of a telegram erroneously delivered to him, announcing sickness, is held, in Bowyer v. Western U. Teleg. Co. (Iowa) 5 L.R.A.(N.S.) 984, to have no right to hold the telegraph company liable for the expense thereof when the sick person proves

to be a stranger to him, where the name of the addressee of the telegram, although similar to, was not identical with, his, and he did not believe he had a relative such as the one stated in the telegram at the place from which it was sent.

Trade name. A sale by a publisher's assignee for creditors of plates, publishing rights, books in process, and books manufactured, if made for the best interests of creditors, is held, in Lothrop Pub. Co. v. Lothrop L. & S. Co. (Mass.) 5 L.R.A. (N.S.) 1077, to include the right to use the publisher's name in using and making available books in process of manufacture and the plates for printing others.

Trespassers. See RAILROADS.

Waters. See MUNICIPAL CORPORATIONS.

Wills. A condition attached to a bequest, requiring the beneficiary to attend a certain church, is held, in Re Paulson's Will (Wis.) 5 L.R.A.(N.S.) 804, not to be invalidated by a constitutional provision giving everyone the right to worship God according to the dictates of his own conscience, and providing that he shall not be compelled to attend any place of worship against his consent.

Marriage and birth of issue are held, in Durfee v. Risch (Mich.) 5 L.R.A.(N.S.) 1084, to revoke a woman's will, under a statute requiring certain formalities for the revocation of wills, but providing that it shall not prevent the revocation implied by law from subsequent changes in the conditions or circumstances of testator, notwithstanding a married woman, by statute, may make a will so that marriage alone will not work a revocation, and that the legislature has abrogated the rule revoking a man's will by marriage and birth of children.

Witnesses. Upon garnishment disclosure proceedings against the executor of an estate, the judgment debtor is held, in Pitzl v. Winter (Minn.) 5 L.R.A.(N.S.) 1009, to be a party interested, and to be prohibited from testifying on behalf of the executor for the benefit of the estate concerning conversations had by the judgment debtor with the testator as to the application of the devise to extinguish a debt due the estate in case of the testator's decease prior to its payment.

New Books.

"An Atlas of Human Anatomy for Students and Physicians." By Carl Toldt. Assisted by Alois D. Rosa. Adapted to English and American and International Terminology by M. Eden Paul. 6 vols. Cloth, $18.

"Mining Laws of the British Empire." By C. J. Alford. Cloth, $3, net.

"California Penal Code Enacted in 1872, as Amended up to and Including 1905, with Statutory History and Citation Digest up to and Including Vol. 147, California Reports." Edited by J. H. Deering. Statutory history and citation digest by Walter S. Brann. Consolidated and edited to include extra session of 1906 by R. M. Sims. Canvas, $5.

"Political Code of California, as Enacted in 1872, and Amended up to and Including 1905." By J. H. Deering and Walter S. Brann. Consolidated and edited to include extra session of 1906 by R. M. Sims. Canvas, $5.

"The Settlement of Estates of Deceased Persons." (Ohio.) By Florien Giaque. 7th ed. Buckram, $6 net.

"A Treatise on Business Law." By Burritt Hamilton. Cloth, 65 cts.

"American Consular Jurisdiction in the Orient." By Frank E. Hinckley. Buckram, $3.50.

"Trial Evidence." By R. Lea Kennedy. Cloth, $2.

"Practice in the Missouri Supreme Court and Court of Appeals in Appellate Proceedings and Original Writs." 2d ed. By G. A. Finkelnburg and Tyrrell Williams. Canvas, $4.50.

"A Brief Practical Statement Regarding Massachusetts Corporations." By G. A. Sweetser. Cloth, 50 cts.

"The Complete Guide for Township Officers." (Ohio.) By W. Mahlon Rickel. 10th ed. Cloth, $4.

"Code of Ordinances Approved November 8, 1906." With all ordinances and amendments passed from January 1, 1906, to December 11, 1906. (New York.) By Arthur F. Cosby. Morocco, $2.50 net.

"Digest of Decisions of the Supreme Courts of California, Kansas, Idaho, Colorado, Utah, Washington, Oklahoma, and the Court of Appeals of Colorado, in the Pacific Reporter, Vols. 66 to 80." $6.

"Pennsylvania Common School Law." By Chester C. Bashore. Buckram, $5.

"The Criminal Prosecution and Capital Punishment of Animals." By E. P. Evans. Cloth, $2.50 net.

"Municipal Control of Public Utilities." By Oscar L. Pond. Cloth, $1.50 net.

"Legal Directory of the United States and Canada. By Joseph A. Boyer. (1907.) $3 net.

"A Treatise on Criminal Law and Criminal Procedure. By C. Erehart Chadman. $2.

"Principles of the Law of Real Property and the Law of Pleading and Practice at Common Law." By C. Erehart Chadman. $2.

"A Short Treatise on Public International Law." By C. Erehart Chadman. $2.

International Law and Diplomacy of the Russo-Japanese War." By Amos S. Hershey. Cloth, $3 net.

"American Law Directory." (Annual.) By G. B. Martindale. (1907.) Sheep, subscription, $15.50.

"The Tariff and the Trusts." By Franklin Pierce. Cloth, $1.50 net.

"New Annotated Baltimore Code." By William C. Bruce. $6 net.

"American Criminal Reports." Vol. 13. $5.25.

Morrison's "Mining Reports." Vol. 22. $5.25.

Silvernail's "Criminal & Penal Code, 1907." (New York.) $6.

Cook's "Annotated Criminal & Penal Code, 1907." $6.

"Commentaries on the Criminal Law of Missouri." By Thomas A. Sherwood. $7.50 delivered.

Smith's "Illinois Criminal Index-Digest." Buckram, $4.

"Selected Cases on the Law of Negotiable Instruments." By Robert E. Bunker. Buckram, $3.50 net.

"The National Administration of the United States of America." By J. Archibald Fairlie. Cloth, $2 net.

"Digest of City Charters." By A. Raymond Hatton. Buckram, $2.50.

"Massachusetts Revised Laws." Annotations to and including acts and resolves 1906, with Supreme Court citations on the same, to and including Vol. 190, Massachusetts Reports. Buckram, $4.

"Michigan Laws Relating to Banking." Compiled under supervision of G. A. Prescott. Paper, $1.50.

"Michigan Laws Relating to Insurance." Compiled under supervision of G. A. Prescott. Paper, $1.50.

"Michigan Laws Relating to Railroads." Compiled under supervision of G. A. Prescott. Paper, $1.50.

"A Digest of International Law." By J. Bassett Moore. Cloth, 8 Vols. $25.

"Texas Decisions Reported in the Southwestern Reporter, Vols. 90–94." January to August, 1906. Sheep, $4.

"General Tax Laws of Texas, Annotated." By J. T. Smith and B. F. Teague. $3.

"Insurance Laws of Texas, Digest of." By W. J. Clay. Cloth, $1.

"Greater New York and State Lawyers' Diary for 1907." By W. Reid Gould. Cloth, $1.

"Practice in the Probate Court of Massachusetts." By Sidney Perley. 2d ed. $3.75.

"Modern Business Corporations." By W. Allen Wood. With forms written or selected by L. B. Ewbank. Cloth, $2.50.

"Outlines of Criminal Law." By Courtney S. Kenny. American edition revised by James H. Webb. $3.

"A Complete List of Adjudicated Patents." By Lineas D. Underwood. Buckram, $5.25.

"Missouri Practice in Civil Cases in the Circuit Courts." By Eugene McQuillin. 2 vols. $12.

Recent Articles in Law Journals and Reviews.

"Legal Ethics."—16 Yale Law Journal, 225.

"The Par Value of Stock."—16 Yale Law Journal, 247.

"The Development of the Commerce Clause of the Federal Constitution."—16 Yale Law Journal, 253.

"The Law of Bank Checks (Practical Series)."—24 Banking Law Journal, 9.

"The Law of Bank Lien and Set-Off."—24 Banking Law Journal, 15.

"Freedom of the Executive in Exercising Governmental Functions from Control by the Judiciary (Concluded)."—15 American Lawyer, 25.

"Mental Anguish Doctrine in Telegraph Cases."—64 Central Law Journal, 108.

"Adoption by Hindu Widows."—9 Bombay Law Reporter, 1.

"Limitation Applicable to Suits for Restitution of Conjugal Rights."—9 Bombay Law Reporter, 19.

"The State Tax on Illinois Central Gross Receipts and the Commerce Power of Congress."—1 Illinois Law Review, 440.

"The Interstate Commerce Clause and State Control of Foreign Corporations."—5 Michigan Law Review, 250.

"Constitutional Aspects of Employers' Liability Legislation."—19 Green Bag, 80.

"The Non-Federal Law Administered in Federal Courts."—40 American Law Review, 819.

"The Code Napoleon—How It was Made and Its Place in the World's Jurisprudence."—40 American Law Review, 833.

"The Privilege of Silence and the Immunity Statutes."—40 American Law Review, 869.

"Economic Forces and Municipal Law."—41 American Law Review, 27.

"The Standard Oil Anti-Trust Complaint."—41 American Law Review, 51.

"Judicial Dispensation from Congressional Statutes."—41 American Law Review, 65.

"Admissibility, in a Criminal Trial, of the Former Testimony of a Witness, Since Dead."—12 Virginia Law Register, 756.

"Some Observations on the Duration of Oil and Natural Gas Leases."—64 Central Law Journal, 89.

The Humorous Side.

NAME RESTORED.—The following is sent us by a Kentucky correspondent who declares that, except for the proper names, it is a literal copy of the recorded judgment in a divorce case.

"P—— Circuit Court.

"David T———
vs. : Judgment.
"Rachel T———

"This cause having been submitted and same coming on for trial and the court being sufficiently advised from the pleadings and proof adjudges that the bonds of matrimony heretofore existing between the plaintiff and defendant are and the same is hereby dissolved and the plfft is divorced from the defendant and this cause is stricken from the docket, that the plfft. is fully restored to his former (maiden) name and habits."

SQUARING THE CIRCLE.—A correspondent sends us a copy of a statute which he says was enacted in Mississippi incorporating a town and declaring "that the corporate limits of said town shall be as follows: Beginning at the quarter stake in front of Caleb Hannah's residence and running 600 yards every direction, making said corporate limits 1,200 yards square." The correspondent says this repeals the mathematical proposition that you cannot square a circle.

ASHAMED OF THE FAMILY.—A petition was recently filed in a Tennessee court by a man named Damm praying that he be allowed to change his name to that of Hamm. The petitioner, who is a native of Denmark, set forth in his petition to the court that his name had caused him considerable annoyance on more than one thousand occasions. His feelings had been particularly hurt since the souvenir post card, bearing portraits of "The Whole Damm Family," had been placed on the market. The court granted the prayer of the petitioner, and his name was changed to Hamm.

A 444-YEAR LAWSUIT.—In the two villages of Luceran and Lancoque, in the Alpes-Maritimes, France, June 10 was kept as a public holiday to celebrate the end of a great lawsuit which had kept the two villages divided since November 14, 1462. The question of dispute was the possession of a piece of land at Lova, which each village claimed. A few days ago the court at Nice definitely settled the matter by dividing the land equally between the villages.

The total cost of this lawsuit during the 444 years amounts to £30,000, while the value of the land in dispute was about £400. The law papers which had accumulated were docketed in 1,856 parcels, which weighed 16 tons, and were stored in a large disused church.—Boston Law Journal and Financial Chronicle.